UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) **Docket No. ER11-2224-007**

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the New York Independent System Operator, Inc. ("NYISO") submits this request for leave to answer, and its answer to, the *Request for Rehearing* of Astoria Generating Company, L.P. ("Astoria") and TC Ravenswood, LLC ("TCR") which refer to themselves as the "New York City Suppliers."[2]

Astoria and TCR erroneously claim that the April 4 Order in this proceeding[3] unlawfully exceeded the Commission's suspension authority under Section 205(e) of the Federal Power Act ("FPA").[4] In reality, the April 4 Order abided by that provision. At the same time, it lawfully accommodated the NYISO's right to voluntarily propose an effective date for its revised Installed Capacity ("ICAP") Demand Curves[5] submitted in its March 29, 2011 compliance filing ("March 29 Filing),[6] that could be later than the end of the suspension period. Astoria and TCR are also wrong to claim that the tariff revisions proposed in the NYISO's March 28 compliance

[1] 18 C.F.R. §§ 385.212 and 385.213 (2010).

[2] In previous filings, the "New York City Suppliers" have included Astoria, TCR, and the "NRG Companies." Because the NRG Companies have not joined the *Request for Rehearing* the NYISO will not refer Astoria and TCR as the "New York City Suppliers" in this pleading.

[3] *New York Indep. Sys. Operator, Inc*., 135 FERC ¶ 61,002 (2011) ("April 4 Order").

[4] 16 U.S.C. 824d(e) (2006).

[5] Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO's Market Administration and Control Area Services Tariff.

[6] The NYISO made the Compliance Filing on March 29, 2011 (as supplemented on March 30,2011, and amended on April 4,2011).

filing in this proceeding ("March 28 Filing"), and accepted by the April 4 Order, would adopt the ICAP Demand Curves that the NYISO proposed in its November 30 Filing in this proceeding for the 2012/2013 and 2013/2014 Capability Years. Their assertion is based on a misunderstanding of the NYISO's established tariff formatting practice. Therefore, and for the reasons specified in more detail below, the Commission should reject the *Request for Rehearing*.

I. REQUEST FOR LEAVE TO ANSWER

The Commission has discretion[7] to accept answers to rehearing requests and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the decision-making process.[8] The Commission should follow its precedent and accept the NYISO's answer in this instance. The answer highlights basic legal and factual errors in the *Request for Rehearing* and will therefore aid the Commission by establishing a clear and accurate record. The fact that the NYISO, in deference to precedent stressing that answers should be limited in scope, has confined its response to the two issues addressed herein should not be construed as agreement with any of the other claims made in the *Request for Rehearing*.

II. ANSWER

A. The April 4 Order Did Not Unlawfully Exceed the Commission's Suspension Authority

Astoria and TCR contend that the April 4 Order's "acceptance of the [March 28 Filing] was contrary to law, because the language proposed by the NYISO, and accepted by the

[7] *See* 18 C.F.R. § 385.213(a)(2).

[8] *See Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has "assisted us in our decision-making process."); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting "PJM's and FPL's answers [to rehearing requests], because they have provided information that assisted us in our decision-making process"); *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record. . . .").

Commission, does not reflect the requirement that the existing rates may remain in effect only until the ***earlier*** of June 28, 2011, or the date set by a subsequent Commission order, and instead would permit them to remain in effect until whatever date is set by a subsequent Commission order."[9] Astoria and TCR cite a variety of cases which indicate that the Section 205(e) limits the Commission to imposing a five-month suspension period. They overlook the fact, however, that the Commission has not proposed to suspend the NYISO's revised ICAP Demand Curves for longer than five months in this docket.

The Commission has been quite clear throughout this proceeding that it was simultaneously exercising its authority to suspend the rates proposed in the November Filing for a maximum of five months[10] while also inviting the NYISO to voluntarily propose that its revised ICAP Demand Curves become effective on a later date. In the January Order,[11] the Commission stated that it was suspending the rates proposed in the November Filing for up to five months but due to the potential "difficulties of implementing revised demand curves in mid-season" invited the NYISO to "indicate in its compliance filing the date it anticipates implementing the new demand curves."[12] The January Order indicated that a proposed effective date as late as November 1, 2011 could be reasonable. It further indicated that, in the interim, the NYISO's currently effective ICAP Demand Curves would "remain in effect until superseded."[13] The Commission reiterated these points in its March 9 Order where it reiterated

[9] *Request for Rehearing* at 2.

[10] Given that the Commission suspended the effectiveness of the NYISO's revised ICAP Demand Curves submitted in compliance with the Commission's January Order, not the existing ICAP Demand Curves, the *Request for Reharing* is inaccurate when it states that the Commission suspended "existing rates."

[11] *New York Indep. Sys. Operator, Inc.* 134 FERC ¶ 61,058 (2011) ("January Order").

[12] *Id.* at PP 167-68.

[13] *Id.* at P 168.

that it was leaving it to the NYISO's discretion to propose to implement the revised ICAP Demand Curves at a date later than the end of the suspension period.[14]

Subsequently, the March 29 Filing stated that it would be possible to implement revised ICAP Demand Curves in the middle of a Capability Period, provided that there was "sufficient time between the date of a Commission order and the date of the ICAP Spot Market Auction to which revised ICAP Demand Curves would apply."[15] The NYISO therefore proposed a "flexible" effective date, which, depending on when the Commission acts, could result in revised ICAP Demand Curves going into effect after the suspension period expires.

There would be nothing unlawful about such an outcome. The maximum suspension period established by Section 205(e) of the FPA is applicable only to the Commission. It does not restrict the right of a utility that submits a tariff filing, such as the NYISO in this proceeding, to propose an effective date more than five months after Commission action on the filing. Nothing in Section 205[16] establishes an outer limit on the amount of time that a utility may request to implement tariff revisions. This is reflected in the Commission's filing regulations which state that "[a]ll rate schedules or tariffs or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective . . . unless a different period of time is permitted by the Commission."[17]

The Commission has frequently accepted proposals by Independent System Operators ("ISOs") to make tariff revisions effective more than five months after the date of the order

[14] *New York Indep. Sys. Operator, Inc.* 134 FERC ¶ 61,178 at P 18 (2011) ("March Order") ("NYISO may choose to defer the effective date even further if it does not wish to implement the revised rates during the summer Capability Period").

[15] March 29 Filing at 13.

[16] 16 U.S.C. 824d(d) (2006).

[17] 18 C.F.R. § 35.3(a)(1) (2011).

accepting them, especially when the time was needed for the revisions to be implemented properly. In addition, it has granted "flexible" effective dates, similar to what the NYISO sought in the March 29 Filing, when the exact implementation timetable is not known at the time of the filing.[18] The Commission has also repeatedly permitted ISOs to defer tariff effective dates via motion when warranted for implementation-related reasons or otherwise.[19]

There was no need for the Commission to consider whether the proposed effective dates in any of the aforementioned cases might exceed its rate suspension authority because it was not exercising that authority. Instead, the Commission in those cases was lawfully accepting effective date proposals voluntarily submitted by filing utilities. The same is true of the April 4 Order. It was consistent with Commission practice, and entirely lawful, for the April 4 Order to allow for the possibility that the NYISO's proposed effective date for the revised ICAP Demand Curves might not arrive until after June 28, 2011. The *Request for Rehearing's* challenge to the lawfulness of the April 4 Order is therefore without merit and should be rejected.

B. The March 28 Filing Followed Standard Tariff Formatting Practices and Did Not Propose to Implement the ICAP Demand Curves Proposed in the November Filing for the 2012/2013 or 2013/2014 Capability Years

Astoria and TCR wrongly assert that the March 28 Filing proposed "to adopt the same ICAP Demand Curves as those proposed in the November 30 Filing" for the 2012/2013 and 2013/2014 Capability Years.[20] The March 28 Filing's transmittal letter expressly stated that the filing's purpose was "to clearly establish that the currently effective ICAP Demand Curves will

[18] *See, e.g., New York Indep. Sys. Operator, Inc., Compliance Filing, Notice of Effective Date and Informational Notice,* Docket No. ER04-230-007, *et al.* (March 29. 2005) (accepting NYISO proposal to make "Real-Time Scheduling" software and tariff revisions effective more than fifteen months after they were filed and more than a year after they were accepted by the Commission.).

[19] *See, e.g.*, November 24, 2009 Motion to Defer Effective Date and Request for Waivers, Docket No. ER09-1612-002 (November 24, 2009).

[20] *Rehearing Request* at 5, n. 17.

be in effect as of May 1, 2011 and reflect that they will remain in effect until a date established by Commission order."[21] That purpose is also obvious from the caption of the transmittal letter "Compliance Filing to State Currently Effective ICAP Demand Curves."

For more than a decade, when the NYISO has proposed tariff revisions, it has filed both a blacklined version depicting all proposed new tariff changes and a clean version that incorporates them. When there are pending revisions to the same tariff section, *i.e.*, previously filed revisions that are not yet effective or approved by the Commission, the base onto which the proposed revisions are marked is the clean version containing the earlier proposed revisions. Thus, the NYISO's long-standing practice has been to accept all previously proposed revisions to the tariff section on which the Commission has not yet ruled in order to create a clean base version on which it marks proposed new changes in blackline. For example, if in Month 1 the NYISO filed proposed revisions to a tariff section, and in Month 2, before the Commission acted on the Month 1 revisions, the NYISO proposed different or additional revisions to the same tariff section, the NYISO would blackline the newly proposed revisions on the clean copy of the tariff filed with the Month 1 revisions. This long-standing practice enables the reviewer of proposed tariff revisions to identify the revisions are proposed in the filing and as described in the transmittal letter. It also enables the reviewer to view the proposed revisions in the context of earlier-proposed revisions pending before the Commission.

The NYISO's software utilized to comply with the Commission's electronic tariff requirements enables the NYISO to continue its long-standing practice of showing in blackline

[21] NYISO March 28, 2011 Filing at 1.

the new proposed revisions on a clean base version of the tariff, with the base version created by accepting all previously-proposed revisions pending Commission decision.[22]

The NYISO followed its standard practice when it submitted the March 28 Filing; namely, it re-filed Section 5.14.1.2 and only marked its proposed new revisions on the table in that section. The numbers in the three columns for ICAP Demand Curve points for the period beginning on "Date Determined by Commission Order to 4/30/2012, 5/1/2012 to 4/30/2013, and 5/1/2013 to 4/30/2014" are the rates that the NYISO filed on November 30, 2010. The numbers in those columns were not addressed by the March 28 Filing. Those values, as revised by the March 29, Filing, are pending before the Commission.

Even assuming that Astoria and TCR did not recognize that the March 28 Filing was adhering to the NYISO's consistent tariff filing practice, the NYISO's transmittal letter made the limited scope of the proposed compliance revisions clear. It is also clear from the April 4 Order that the Commission understood that the purpose of the filing was as stated in the March 28 Filing's transmittal letter. The April 4 Order reiterated that "the currently effective demand curves will remain in effect until superseded" and added that "this language does not provide for or authorize any escalation or adjustment of the current demand curve rates during the suspension period; therefore the current 2010/2011 demand curve rates are to remain in effect without adjustment during the suspension period until superseded by rates that comply with the January 28, 2011 Order."[23]

[22] For the version of its tariffs the NYISO posts on its website, the NYISO's general practice is to only show accepted and effective tariff revisions and to not include as a blackline proposed revisions pending before the Commission. Given the USPG and TC Ravenswood mischaracterization of the NYISO's tariff filing which necessitates this filing, on the version presently posted to its website, the NYISO has elected to show as a blackline the Demand Curve rates that the Commission accepted for filing subject to a compliance filing in accordance with the Commission's January 28 Order.

[23] April 4 Order at P 3.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission grant it leave to answer and reject Astoria's and TCR's *Request for Rehearing* of the Commission's April 4 Order in this proceeding.

Respectfully Submitted,

/s/Ted J. Murphy
Ted J. Murphy
Counsel to the
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May 17, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 17th day of May, 2011.

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